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## Poland – Electronic Services



Full title:	Act of 18 July 2002 on Providing Services by Electronic Means.
Title of relevant section:	Chapter 1: General Provisions (Article 2: Definitions; Article 4: Consent) Chapter 2: Obligations of Service Providers who Provide E-Services (Arts 5-11)
Relevant Amendments	The Act of 16 November 2012 amending the Act - the Telecommunications Law and other laws (Journal of Laws 2012, no 241. item. 1445); Art. 6(2) amended Art. 10(1). <a href="http://isap.sejm.gov.pl/DetailsServlet?id=WDU20120001445">http://isap.sejm.gov.pl/DetailsServlet?id=WDU20120001445</a>
CHAPTER 1	GENERAL PROVISIONS
Article 2	<ol style="list-style-type: none"> <li>1. Email Address: designation of information and communication system (i.e. ICT system) that enables communication by means of electronic communication, in particular electronic mail.</li> <li>2. Commercial communication - any communication intended, directly or indirectly, to promote the goods, services or image of a trader or other persons pursuing a profession, whose right to perform the profession depends on compliance with requirements laid down in other acts, excluding information enabling communication with the particular person by means of electronic communications, and communications about goods and services not intended to achieve the commercial effect desired by the entity which commissioned their dissemination, in particular without remuneration or other benefits from producers, sellers and service providers,</li> <li>3. Information and Communication System (ICT System) - a set of IT devices and software functioning together, ensuring processing and storage, and also transmitting and collecting of data within telecommunications networks by means of a terminal equipment appropriate for the kind of the given network within the meaning of the Telecommunications Act of 16 July 2004.</li> <li>4. Provision of services by electronic means – delivery of a service that is provided without simultaneous presence of the parties (i.e. remotely/ at a distance) by means of data transmission upon individual request by the service user, transferred and received through devices for electronic processing, including digital compression, and for data storage, with the service being entirely dispatched, received and transferred by means of a telecommunication network within the meaning of the Act of 16 July 2004 – Telecommunication Law.</li> <li>5. Electronic means of communication – technical solutions, including ICT equipment and associated software tools, allowing individual communications at a distance by means of data transmission between ICT systems, in particular, electronic mail.</li> <li>6. Service Provider - a natural person, legal person or organisational unit without legal personality that while conducting, even incidentally, a gainful or professional activity, provides services by electronic means</li> <li>7. Service recipient - any natural person, legal person, organisational unit without legal personality, who uses services provided by electronic means.</li> </ol>
Article 4	<ol style="list-style-type: none"> <li>1. If the law requires the consent of the recipient, this consent:</li> </ol>

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- 1) cannot be presumed or implied on the basis of a declaration of intent about other content.
  - 2) may be revoked at any time.
  2. The service provider shall show proof of having obtained the consent as referred to in para. 1, for evidential purposes.
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## CHAPTER 2

## OBLIGATIONS OF SERVICE PROVIDERS WHO PROVIDE SERVICES BY ELECTRONIC MEANS

## Article 5

1. A service provider shall make, clearly, explicitly and directly available through an ICT system used by a service recipient, basic information specified in paragraphs 2 to 5 below.
  2. A service provider gives out:
    - 1) His/her electronic addresses,
    - 2) His/her name, surname, a place of residence and an address, or its name or a firm, headquarters and address.
  3. If the service provider is an entrepreneur, it shall also give information on relevant permission and permitting authority, in case when such permission for providing the service is required by provisions of separate regulations.
  4. The rule set in paragraph 3 is without prejudice to an obligation set forth in Art. 21(2)<sup>1</sup> of the Act 2 July 2004 on freedom of economic activity (Dz. U. 2013. item 672, as amended)
  5. If a service provider is a natural person, whose right to perform a profession is subject to compliance with requirements laid down in separate acts, it also gives out:
    - 1) in case of the appointment of an agent/ intermediary, his/her name, surname, place of residence and an address or its name or a firm, headquarters and address,
    - 2) name of professional association, which he/she is a member of,
    - 3) professional title used, and the country where the title has been conferred,
    - 4) number in a public register which he/she is registered in including name of the register and name of an authority which maintains the register,
    - 5) information on the existence of professional ethic rules relevant to the profession, and how to access the rules.
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## Article 6

A service provider is obliged to provide a service recipient with access to current information about:

- 1) particular risks related to using a service provided by electronic means,
  - 2) function and aim of software or data which are not an element of service contents, and which are introduced by the service provider into an ICT system used by the service recipient.
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## Article 7

A service provider manages operation of an ICT system under his/her control, enabling a service recipient free of charge:

- 1) In case when nature (characteristics) of a service requires:
    - a. using by a service recipient of a service provided by electronic means in a manner which prevents unauthorised persons from accessing the contents of communications being an element of the service, in particular through
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<sup>1</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20041731807>

Art. 21: If the trader offers goods or services in direct sales or sales at a distance through the mass media, IT networks or unaddressed mail, he must offer to provide at least the following data:

1. The Company
2. The tax identification number (TIN)
3. The registered office and address

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- applying cryptographic techniques appropriate for characteristics of the service being provided,
- b. unequivocal identification of parties to the service provided by electronic means and confirmation of submitting statements of will and their contents, necessary for concluding a contract for providing the service, in particular using secure electronic signature within the meaning of the Act of 18 September 2001 on Electronic Signature (Journal of Laws No. 130, item 1450,)
- 2) Terminating, at any moment, using of a service provided by electronic means.
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#### Article 8

1. A service provider:
    - 1) establishes regulations for providing services by electronic means referred hereinafter as "the regulations",
    - 2) makes available the regulations to a service recipient free of charge before concluding the contract on providing such services, and also - on his/her request - in such a manner, which enables downloading, retrieval and saving contents of the regulations through the ICT system used by the recipient.
  2. A service recipient shall not be bound by the provisions of the regulations, which have not been made available to him/her in the manner referred to in para. 1 point 2.
  3. The regulations specify in particular:
    - 1) types and scope of services provided by electronic means,
    - 2) conditions for providing services by electronic means including:
      - a. technical requirements necessary for co-operation with an ICT system being used by the service provider,
      - b. ban on delivering messages of illegal nature by a service recipient,
    - 3) conditions for concluding and terminating contracts for providing services by electronic means,
    - 4) procedure for making complaints.
  4. Service provider renders services by electronic means according to the regulations.
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#### Article 9

1. Commercial communication shall be clearly identified and marked in such a way that there is no doubt that it is a commercial communication.
  2. Commercial communication includes:
    - 1) the name of the entity, on behalf of which the message is disseminated / distributed, and its email addresses,
    - 2) clear description of the form of promotional activities, in particular price reductions (discounts), free benefits in cash or in kind and other benefits related to the promoted goods, service or image, as well as the clear identification of the conditions necessary to take advantage of these benefits, if they are a component of the offer,
    - 3) any other information, which may have an impact on the extent of the liability of the parties, in particular warnings and restrictions.
  3. The provisions of paragraph 1 and paragraph 2 are without prejudice to the provisions of the following acts:
    - 1) Act of 16 April 1993 on combating Unfair Competition<sup>2</sup> (Journal of Laws 2003, no: 153, item 1503, as amended) and
    - 2) Act of 19 November 2009 on games of chance (Dz. U. No 201, item 1540, as amended)<sup>3</sup>
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#### Article 10

1. Sending unsolicited commercial communication addressed to the specified recipient who is a natural person by means of electronic communication, in particular
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<sup>2</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU19930470211>

<sup>3</sup> <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20092011540>

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electronic mail is prohibited.<sup>4</sup>

2. Commercial communication shall be considered solicited, if the recipient has expressed his/her consent to receive such communication, in particular, he/she has made available for the purpose of such receipt an electronic address that identifies him/her.
3. The activity, referred herein to paragraph 1, shall be regarded as unfair competition practice within the meaning of provisions of the Act referred to in art. 9, paragraph 3, point 1.

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#### Article 11

Provisions of the Civil Code and other acts shall apply to all of the questions referring to provision of services by electronic means that are not regulated within the Act on providing services by electronic means, in particular to making statements of will in the electronic form.

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<sup>4</sup> Art. 10(1) has been amended by Art. 6(2) of The Act of 16 November 2012 amending the Act - the Telecommunications Law and other laws (Journal of Laws 2012, no 241. item. 1445); adding "who is a natural person".